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August 21, 2003

The Honorable John D. Ashcroft
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Mr. Attorney General:

I am writing because of my concern that your national tour along with recent public relations efforts by your United States Attorneys to stem criticism of and generate support for the USA PATRIOT Act, the U.S. Department of Justice's enforcement of that law, and proposed extensions of that Act violate not only prohibitions on propaganda efforts by the Executive Branch but also the Anti-Lobbying Act. In my judgment, it would be a far better use of taxpayer funds if you were to work with the Congress to rationalize and curtail the existing authorities you have, rather than to travel around the country defending your actions.

It has been reported that your speech today in Detroit is part of a "series of appearances . . . aimed at countering criticism from civil liberties groups and some lawmakers that authorities have gone too far in wielding anti-terrorism powers granted by Congress after the Sept. 11, 2001 attacks."¹ According to the press, one of your employees further stated that "'the decision has been made that it's time that we get out there and talk about the successes . . . There have been a lot of mischaracterizations of certain authorities that Congress gave the Justice Department, and we need to set the record straight.'"² Furthermore, you have "asked [Federal prosecutors around

¹Dan Eggen, *Ashcroft Planning Trip to Defend Patriot Act*, WASH. POST, Aug. 13, 2003, at A2.

²*Id.*

the country] to organize town-hall style forums on the PATRIOT Act in their cities.”³ Finally, you have set up an entirely new Internet site dedicated to this propaganda effort.⁴

First, as you are no doubt aware, the appropriations law that is funding the Department for fiscal year 2003 specifically provides that “no part of any appropriations contained in this Act shall be used for publicity or propaganda purposes not authorized by Congress.”⁵ I am unaware of any approval that Congress has provided since the enactment of the appropriations law that gives the Department the authority to engage in the effort described above.

Second, your activities also may violate the Anti-Lobbying Act. The Act generally prohibits any appropriated funds from being used to support or oppose either directly or indirectly any legislation, law, or policy absent the express authorization of Congress.⁶ This prohibition has been interpreted to mean that the Executive Branch should not engage in indirect or “grass roots” lobbying of the public.⁷ As a former House Judiciary Committee Chairman once stated about the Department of Justice in a previous Administration: “the Department has often crossed the fine line between offering its advice and consultation on legislation when requested and actively lobbying against the legislation.”⁸ The statements of your officials make it appear that you intend to do exactly that – lobby on behalf of the Department’s anti-terrorism efforts.

Third, the new “Victory Act” you apparently are promoting, again in potential violation of Federal law, appears to be the same old wine in a new bottle. This proposal is almost identical to previously discredited ideas floated in the draft “Patriot II” bill, which was publicly leaked

³Eric Lichtblau, *Ashcroft Blasts Efforts to Weaken Terrorism Law*, N.Y. TIMES, Aug. 20, 2003, at A14.

⁴See U.S. Department of Justice Internet site: <http://www.lifeandliberty.gov> (visited Aug. 20, 2003).

⁵Consolidated Appropriations Resolution of 2003, Pub. L. No. 108-7, § 601, 117 Stat. 11, 99 (2003).

⁶See 18 U.S.C. § 1913 (2003).

⁷1 OFFICE OF THE GENERAL COUNSEL, U.S. GENERAL ACCOUNTING OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 4-158 (2d ed. 1991).

⁸*Cooperation, Comity, and Confrontation – Congressional Oversight of the Executive Branch: Hearing Before the Subcomm. on Rules and Organization of the House of the House Comm. on Rules*, 106th Cong., 1st Sess. (July 15, 1999) (statement of Rep. Henry Hyde (R-IL)).

The Honorable John D. Ashcroft

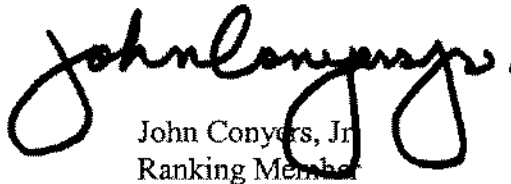
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earlier this year. In my view, this bill has little or nothing to do with anti-terrorism investigations and instead would give Federal agents new and unjustified authorities in all criminal law cases.

As a result of these concerns, I would ask that you either desist from further speaking engagements in violation of the above-stated legal prohibitions, or provide me with a written explanation concerning the legality of the ongoing public relations effort in which you and your U.S. Attorneys are engaged. I look forward to working with you on this matter and await your response. Please reply to my Committee office with attention to Mr. Perry Apelbaum, Minority Chief Counsel, U.S. House Judiciary Committee, 2142 Rayburn HOB, Washington, DC 20515, and fax to (202) 225-4423.

Sincerely,

A handwritten signature in black ink, appearing to read "John Conyers, Jr.", with a large, stylized flourish at the end.

John Conyers, Jr.
Ranking Member

cc: The Honorable William E. Moschella
Assistant Attorney General
Office of Legislative Affairs

The Honorable F. James Sensenbrenner, Jr.
Chairman
U.S. House Committee on the Judiciary